

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on January 5, 2001  
at 10:09 A.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)

**Members Excused:** Sen. Walter McNutt (R)

**Members Absent:** None.

**Staff Present:** Anne Felstet, Committee Secretary  
Valencia Lane, Legislative Branch  
Cecile Tropila, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 12, SB 87; 1/3/2001  
Executive Action: SB 87

#### **OPENING REMARKS**

**CHAIRMAN LORENTS GROSFIELD** noted that today's meeting was posted at 9:00 a.m. and he apologized for that. Generally speaking the meeting would be held at 10:00 a.m. on Mondays and 9:00 a.m. most other days. After the Attorney General's introductions, **CHAIRMAN GROSFIELD** asked the two new senators, **SEN. JERRY O'NEIL** and **SEN. GERALD PEASE** to introduce themselves and tell the committee why they wanted to serve on the Judiciary Committee. **CHAIRMAN**

**GROSFIELD** also asked the committee to think about proxy voting and whether past procedure of keeping votes open for 24 hours would be acceptable.

#### **ATTORNEY GENERAL'S STAFF INTRODUCTION**

**Mike McGrath, Attorney General of Montana** introduced the Department of Justice staff who would do legislative duties during the Session. He said the Department of Justice was a large department with 700 employees, but they were short-handed, especially the first few months. He offered the staff's services and asked the committee to feel free to call them with questions. **John Connor, Director of Prosecutor Services Bureau**, was a prosecutor and had been involved with the criminal justice system for over 25 years. He was considered to be one of the finest prosecutors in Montana and would be a valuable resource in the department as well as to the committee. **Mike Batista, Director of the Division of Criminal Investigation**, had many years in law enforcement. He would appear before the committee from time to time. **Pam Bucy, Assistant Attorney General** and Chief Liaison for the committee and the department of Justice. She was a Lewis and Clark County Deputy Attorney. She had several years experience as a criminal prosecutor and would be available. **Brenda Nordlund, Assistant Attorney General** represented the Division of Motor Vehicles, and would handle issues relating to D.U.I. and motor vehicles. **Galen Hollenbaugh, Deputy Chief of Staff** within department, would be the one to track bills.

#### **HEARING ON SB 87**

**Sponsor:** SEN. MIGNON WATERMAN, SD 26, HELENA

**Proponents:** Robert Throssell, Montana Magistrates, Judges of  
the Courts of Limited Jurisdiction  
Karen Bryson, Clerk of Helena Court  
Debra Rennie, Jefferson County Clerk of Court

**Opponents:** None

#### **Opening Statement by Sponsor:**

**SEN. MIGNON WATERMAN, SD 26, HELENA**, introduced SB 87 on behalf of city courts and others involved in limited jurisdiction. SB 87 was a housekeeping measure. Essentially, there were 3 courts of limited jurisdiction: Municipal, Justice, and City. This bill would create consistent language for those three courts regarding their personnel. Changes in this bill were because of drafting updates for gender purposes. Example: Justice of the Peace are

Justice Courts. The real change allowed local courts—and it was permissive—to have a Clerk of Court. It would be appropriate for some communities. Example: Helena had enough need and enough court personnel that they may need to have and may want to identify a Clerk of Court instead of just a clerical assistant. On the other hand, there were many communities that may not want to have a Clerk of Court because they didn't have resources or the need. Therefore, it was permissive at the local level and then it simply made consistent the language for the three court levels.

**Proponents' Testimony:**

**Robert Throssell, Montana Magistrates Association, Judges of the Courts of Limited Jurisdiction**, said the Association appeared in support of SB 87 as a way of recognizing the work of the clerks in the court, but also recognizing there were many courts of limited jurisdiction that didn't need a clerk. The permissive language allowed the governing body of the city or county to designate and recognize the work, but also take into account the diversity and wide range of work in the courts of limited jurisdiction.

**Karen Bryson, Clerk of Helena City Court**, said this bill allowed Clerks of Justice and City Courts to be recognized. It was permissive therefore there would be no financial impact on local governments. She sought approval from the city manager, Tim Burton. He said to relay to the committee that he supported this bill and considered it a housekeeping bill. There would be no impact to the city of Helena.

**Debra Rennie, Jefferson County Justice Clerk of Court**, said clerks were trying to receive recognition and show that there was a need for this in some courts.

**Opponents' Testimony:**

None

**Questions from Committee Members and Responses:**

**SEN. RIC HOLDEN** raised a question on page 1 lines 13 and 14 about clerks working in "dignified surroundings", asking if they had that currently. **SEN. WATERMAN** said that they did. This was one of the housekeeping changes; simply a rewording and not a change in meaning of what had been done before.

**SEN. HOLDEN** asked if the part that **SEN. WATERMAN** was interested in was on line 20. **SEN. WATERMAN** said yes. It used the words

"may provide a Clerk of Justice Court". The previous wording on line 13 just refers to clerical services. The language in the Municipal Clerk Law clarified clerk, but the City or Justice Court did not have that clarification. This bill brought all three courts of limited jurisdiction into conformity through uniform language.

**Closing by Sponsor:**

**SEN. WATERMAN** closed on SB 87 and reiterated that it was a simple housekeeping bill that made the language consistent and brought some recognition to the clerks that were working in the larger courts, yet didn't mandate anything on any of the courts.

**HEARING ON SB 12**

**Sponsor:**           **SEN. LINDA NELSON, SB 49, ROOSEVELT**

**Proponents:**       **Nancy Butler, State Fund**  
                          **Jacqueline Lenmark, American Insurance Association**  
                          **Riley Johnson, National Federation of Independent**  
                          **Business**

**Opponents:**       **None**

**Opening Statement by Sponsor:**

**SEN. LINDA NELSON, SD 49, ROOSEVELT**, introduced SB 12. This bill changed the good faith statute as far as Worker's Comp. She said good faith was a very nebulous term. Therefore, the bill clarified that if the department investigated and acted on a report, that the person doing the reporting would not be held liable. She said SB 12 was a necessary thing because the law was there to protect people, but sometimes people fell through the cracks.

To illustrate the bill's necessity, she gave an example of two of her constituents who reported to the Workers' Compensation Fraud Hotline. They were identified and sued by the person they reported. The state was also named in the suit, but was removed because they were found to be doing their job. The constituents eventually settled after several years.

**SEN. NELSON** said the lawsuit cost her constituents a lot of money, but they were glad it was over. She thought they would never call the fraud hotline again, which was sad. Unless the law was changed, she would never encourage anyone to call the hotline.

**Proponents' Testimony:**

**Nancy Butler, State Fund General Council**, said State Fund was required by law to have a fraud program. They focused on detection and prevention and implemented the fraud program through the Department of Justice. The department provided investigation and prosecution services to State Fund. In addition to being required by law, she said State Fund took the fraud program seriously, and tips from citizens were an important way to learn of potential fraud. These citizens could also become witnesses in cases. They didn't want to discourage citizen participation in this program. Therefore, they encouraged support of the bill.

**Jacqueline Lenmark, American Insurance Association**, said the AIA was a trade association comprised of over 350 property and casualty insurers. It was one of those insurers, not a member of that group, but an insurer like that, that was the insurer of one of the individuals that was sued in the lawsuit mentioned by **SEN. WATERMAN**. **Ms. Lenmark** happened to be the attorney who was retained to defend one of those members on behalf of that insurance company in the lawsuit. AIA had been a strong supporter of all fraud insurance initiatives. The policy of the association was to have strong insurance fraud protections in place, and this bill would be an important improvement in the Workers' Compensation Act. This particular section did not directly relate to the company that **Ms. Lenmark** represented under the Workers' Comp Act, but it was compatible and in conformance with similar protections contained in the Montana Insurance Code.

**Riley Johnson, National Federation of Independent Business**, said the NFIB had nearly 8,000 small business owners in the state of Montana and they supported the bill. He said they asked the members to rank the most important issues to them as a small business owner in order of importance. Number one by a huge majority was fear of being sued because they had to spend large amounts of money to prove they were right. He said this bill helped to address that cause.

#### **Opponents' Testimony:**

**None**

#### **Questions from Committee Members and Responses:**

**SEN. JERRY O'NEIL** asked if the definition of "takes action" included governmental entities sending a letter of reprimand to the suspected violator. **SEN. NELSON** assumed that would be a part of it.

**SEN. O'NEIL** asked if somebody had a problem with someone for not giving full value at a gas station, then the governmental entity sent a letter to the business and said, "What's going on", would that be taking action so that the entity couldn't sue the reporter for dragging their name through the gutter. **SEN. NELSON** said that sounded more like a letter of inquiry, not a definite action.

**SEN. O'NEIL** restated his question saying: if an unhappy customer of one of Riley Johnson's members were to complain to the state that that member didn't give a customer ample value for their dollar, that they were defrauding the customer for their money, then the state sent a letter of inquiry to the business, would that preclude the business from suing the complainer for dragging their name through the gutter? **Jacqueline Lenmark, American Insurance Association**, said she believed it would.

**SEN. STEVE DOHERTY** followed up on **SEN. O'NEIL's** question. He said the purpose and intent of the bill in section 2 was very clear for Worker's Comp fraud, but **SEN. O'NEIL's** question went to section 1 talking about suspecting fraudulent activity, then reporting that to a governmental entity and the governmental entity writing a letter, or doing anything, and the bill was not solely limited to Workers' Comp cases; it was much broader. **SEN. DOHERTY** said it pertained to any reporting of any activity to any governmental entity. He questioned why section 1 was in the bill, when the evil that **SEN. NELSON** clearly brought forward seemed to be in section 2. **Ms. Lenmark** said section 1 was broader than Workers' Comp and it would be supported by codification instruction which contemplated that it would be codified in Title 27. She hoped it was clear that the individual being protected was the one who made the report. However, any individual who made a report on any fraudulent or criminal activity would then be protected from an individual action from the person who was reported for malicious prosecution or another theory like malicious prosecution.

**SEN. DOHERTY** said he seemed to recall that one of the elements of malicious prosecution was someone doing a legally approved activity for an illegal purpose. The bill seemed to indicate that if somebody got the state to do any action whatsoever on any governmental activity, the reporter would be off the hook for maliciously, deviously attempting to bring some kind of governmental activity or sanction down on some individual. **Ms. Lenmark** said section 1 language was not that broad. The report had to be about suspected, fraudulent, or criminal activity and then the governmental entity would have to investigate the report AND take action. She pointed out the conjunctive requirement. One concern she had concerned other sorts of government programs

that had been set-up where individuals who might in good faith make a report would then be exposed to perhaps not liability, but the requirement to go through the costly defense. In the instance described in the testimony today, the result was the very costly settlement of a lawsuit just for making a good-faith report that was followed up on.

**SEN. DOHERTY** asked if criminal activity included violation of a civil code section of Montana law? He gave the example of a motor vehicle violation such as reporting someone weaving and dodging down the highway, then asked if this bill would protect the reporter from any lawsuit for bringing that to the government's attention. **Ms. Lenmark** replied that it would if the activity reported was in fact criminal activity; this bill didn't protect someone for reporting something of a civil nature. She said the incident just described even if a misdemeanor, would have some sort of criminal penalty attached to it. Likewise, there would be some examples of that in Title 87 Fish and Game violations. The proposed section was confined only to criminal or fraudulent activity. It was carefully drafted that way.

**CHAIRMAN LORENTS GROSFIELD** commented that the advertising to report a Fish and Game violation talked about confidentiality. Then he asked at what point did a person, either under Fish and Game or Workers' Comp., find out who lodged the complaint. Under what circumstances did they find out? **Ms. Lenmark** said that was one of the reasons why the constituents' situation came to light. People had the opportunity to make an anonymous report or to provide their names when they called the fraud hotline. The constituents in the situation provided their name, but asked for it to be confidential. Through an error in the investigation process, their names were not kept confidential and were released to the person who became the plaintiff in the malicious prosecution suit. When the malicious prosecution suit began to run its course, the state was able to be dismissed on a motion for summary judgement because they were doing their duty. The individuals did not have that same kind of protection. They had been identified for reporting that they saw the individual doing activity that was not consistent with an injury, and were required to continue with the suit and ultimately to settle.

**CHAIRMAN GROSFIELD** asked if the individuals had an action against the entity who made the mistake. **Nancy Butler, State Fund General Council**, said she had not heard about the disclosure of their names and the information that was part of an investigation was not to be disseminated at any time. Perhaps after someone swore out a statement in the prosecution stage, their name could be made available. She thought it would be possible to take action against the entity who disclosed the name.

**SEN. O'NEIL** asked if this law applied to divorce situations. For example if a wife complained to the state tax division saying her husband defrauded the government by taking a trip with his secretary and declaring it a business expense. Then the state audited the husband. Would this bill save the wife from liability for doing a false report? **Ms. Lenmark** said she thought that example would be a civil matter and would not come under protection from this particular proposed section. She thought the husband in the situation would have independent and separate relief under Title 40 under the new provision last session about new discovery and reporting requirement and failure to disclose under those provisions.

**SEN. MIKE HALLIGAN** brought the discussion back to the original intent of the bill, which was to deal with Workers' Comp hotline immunity issues. He said section 1 did deal with the entire range of reporting that could happen, but it didn't say it had to be a good-faith report as in section 2. He said that was a problem. He asked if section 2 could be dealt with solely since that was the intent of the bill. **SEN. NELSON** replied that would be fine because what she wanted to accomplish was that if anybody called the Workers' Comp hotline, they would not be held liable if reporting in good faith. She also wanted to narrow the definition of good faith to avoid future incidents like what her constituents went through.

**CHAIRMAN GROSFIELD** asked if the statute specified confidentiality and if it was strong enough. **Ms. Butler** responded that the State Fund used a non-statutory hotline and they had Criminal Justice Agency status through an executive order by the governor. They then used the criminal statutes in Title 45 regarding confidentiality of investigation results. The requirements were very strict about how information could be released.

**SEN. HALLIGAN** pointed out the child abuse reporting section 41-4-203. The statute stated that people who reported were immune from liability, civil or criminal, that might be incurred, unless the person was grossly negligent or acted in bad faith or with a malicious purpose. He said the Fish and Game had similar protections.

**CHAIRMAN GROSFIELD** asked if **SEN. HALLIGAN** was suggesting that kind of language be used in this bill as well. **SEN. HALLIGAN** said yes.

**Closing by Sponsor:**

**SEN. NELSON** closed on SB 12 saying she thought names became known or part of public record once the case was closed. She said she



also was concerned about other hotlines because she didn't want those people to endure what her constituents had to.

**EXECUTIVE ACTION ON SB 87**

**Motion/Vote:** SEN. DOHERTY moved that SB 87 DO PASS. Motion carried unanimously.

**ADJOURNMENT**

Adjournment: 11:05 A.M.

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SEN. LORENTS GROSFIELD, Chairman

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ANNE FELSTET, Secretary

LG/AFCT

**EXHIBIT** (jus03aad)